

**CITY OF NEWTON
PURCHASING DEPARTMENT**

CONTRACT FOR NEWTON PUBLIC SCHOOLS

PROJECT MANUAL:
SUPPLY & DELIVER PRODUCE
TO THE NEWTON PUBLIC SCHOOLS LUNCH PROGRAM
INVITATION FOR BID #10-05
(Rebid for #09-105)

AUGUST 2009
David B. Cohen, Mayor

CITY OF NEWTON
PURCHASING DEPARTMENT
INVITATION FOR BID# 10-05

The City of Newton invites sealed bids from Contractors to:

**SUPPLY & DELIVER PRODUCE
TO THE NEWTON PUBLIC SCHOOLS LUNCH PROGRAM**

Bids will be received until: **9:30 a.m., August 27, 2009**

at the Purchasing Department, Room 204, Newton City Hall, 1000 Commonwealth Ave., Newton, MA 02459. Immediately following the deadline for bids all bids received within the time specified will be publicly opened and read aloud.

The term of the awarded contract shall extend **from the day of execution through February 28, 2010**. If for any part thereof during the term of this Agreement, funds for the discharge of the City's obligations under this Agreement are not appropriated and authorized, or funds so appropriated and authorized are reduced or withdrawn, then this Agreement shall terminate.

Award will be made to the lowest, responsible, and responsive bidder for **all items** based on the Grand Total. Any bidder not providing prices for all line items may be deemed unresponsive and therefore rejected. **Inside deliveries to six schools is required to start on or before November 1, 2009.**

Contract Documents will be available online at the City's website: www.ci.newton.ma.us/bids or for pickup at the Purchasing Department after: **10:00 a.m., August 13, 2009**. There will be no charge for contract documents.

Bid Surety is not required for this bid.

All bids are subject to the provisions of M.G.L. Chapter 30B.

All bids must be submitted with one ORIGINAL and one COPY.

All prices shall be FOB Inside delivery.

Some City of Newton bids are available on the City's web site, www.ci.newton.ma.us/bids, Invitation for Bid. It is the sole responsibility of the contractor downloading these bids to ensure they have received any and all addenda prior to the bid opening. Addenda's will be available online within the original bid document as well as a separate file. If you download bids from the internet site and would like to make it known that your company has done so, you may fax the Purchasing Dept. (617) 796-1227 or email purchasing@newtonma.gov with your NAME, ADDRESS, PHONE, FAX AND INVITATION FOR BID NUMBER.

The City of Newton's Purchasing Dept. will convert to an email notification system of all upcoming public bids effective July 1, 2009. If you wish to receive notification of bids, please email us your company information to purchasing@newtonma.gov, otherwise you may view all City of Newton public bids online at www.ci.newton.ma.us/bids.

The City of Newton reserves the right to waive any informalities in any or all bids, or to reject any or all bids, in whole or in part, if it be in the public interest to do so.

CITY OF NEWTON

Re Cappoli
Chief Procurement Officer

August 13, 2009

CITY OF NEWTON
DEPARTMENT OF PURCHASING
INSTRUCTIONS TO BIDDERS

ARTICLE 1 - BIDDER'S REPRESENTATION

- 1.1 Each General Bidder (hereinafter called the "Bidder") by making a bid (hereinafter called "bid") represents that:
1. The Bidder has read and understands the Contract Documents and the bid is made in accordance therewith.
 2. The Bidder has visited the site and is familiar with the local conditions under which the Work has to be performed.
- 1.2 Failure to so examine the Contract Documents and site will not relieve any Bidder from any obligation under the bid as submitted.

ARTICLE 2 - REQUEST FOR INTERPRETATION

- 2.1 Bidders shall promptly notify the City of any ambiguity, inconsistency, or error which they may discover upon examination of the Contract Documents, the site, and local conditions.
- 2.2 Bidders requiring clarification or interpretation of the Contract Documents shall make a written request to the *Chief Procurement Officer*, at purchasing@newtonma.gov or via facsimile (617) 796-1227. The City will answer such requests if received seven (7) calendar days before the date for receipt of the bids.
- 2.3 Interpretation, correction, or change in the Contract Documents will be made by Addendum which will become part of the Contract Documents. The City will not be held accountable for any oral instruction.
- 2.4 Addenda will be faxed or mailed First Class postage by the USPS, to every individual or firm on record as having taken a set of Contract Documents.
- 2.5 Copies of addenda will be made available for inspection at the location listed in the Invitation for Bids where Contract Documents are on file, in addition to being available online at www.ci.newton.ma.us/bids.
- 2.6 Bidders downloading information off the internet web site are solely responsible for obtaining any addenda prior to the bid opening. If the bidder makes themselves known to the Purchasing Dept., at purchasing@newtonma.gov or via facsimile (617) 796-1227, they shall be placed on the bidder's list. Bidders must provide the Purchasing Dept. with their company's name, street address, city, state, zip, phone, fax and **INVITATION FOR BID NUMBER# 10-05**

ARTICLE 3 - PREPARATION AND SUBMISSION OF BIDS

- 3.1 Bids shall be submitted on the "Bid Form" as appropriate, furnished by the City.
- 3.2 All entries on the Bid Form shall be made by typewriter or in ink.
- 3.3 Any quantities indicated on the Bid Form or elsewhere in the Project Manual or Drawings are estimates only and are given solely as a basis for the comparison of bids. The City does not by implication or otherwise guarantee them to be even approximately correct. The Contractor shall have no claim for additional compensation, or refuse to do the work called for, by reason of the actual quantities involved being greater or lesser by any amount than those called for in the proposal.
- 3.4 Where so indicated on the Bid Form, sums shall be expressed in both words and figures. Where there is a discrepancy between the bid sum expressed in words and the bid sum expressed in figures, the words shall control.

- 3.5 All proposals which contain abnormally high prices, or abnormally low prices, for any class of work, or those which contain unbalanced bidding in any form or manner may be rejected as informal.
- 3.6 Bid Deposits shall be submitted in the amount specified in the Invitation for Bids. They shall be made payable to the City of Newton and shall be either in the form of cash, certified check, treasurer's or cashier's check issued by a responsible bank or trust company, or a bid bond issued by a surety licensed to do business in the Commonwealth of Massachusetts; and shall be conditioned upon the faithful performance by the principal of the agreements contained in the bid.
- Bid deposits of the three (3) lowest responsible and eligible Bidders shall be retained until the execution and delivery of the Owner/Contractor agreement.
- 3.7 The Bid, including the bid deposit shall be enclosed in a sealed envelope with the following plainly marked on the outside:
- * GENERAL BID FOR:
 - * NAME OF PROJECT AND INVITATION NUMBER
 - * BIDDER'S NAME, BUSINESS ADDRESS, AND PHONE NUMBER
- 3.8 Date and time for receipt of bids is set forth in the Invitation for Bids.
- 3.9 Timely delivery of a bid at the location designated shall be the full responsibility of the Bidder.

ARTICLE 4 - ALTERNATES

- 4.1 Each Bidder shall acknowledge Alternates (if any) in Section C on the Bid Form.
- 4.2 In the event an Alternate does not involve a change in the amount of the base bid, the Bidder shall so indicated by writing "No Change", or "N/C" or "0" in the space provided for that Alternate.
- 4.3 Bidders shall enter on the Bid Form a single amount for each Alternate which shall consist of the amount for work performed by the Contractor.
- 4.4 The low Bidder will be determined on the basis of the sum of the base bid and the accepted alternates.

ARTICLE 5 - WITHDRAWAL OF BIDS

- 5.1 Any bid may be withdrawn prior to the time designated for receipt of bids on written or telegraphic request. Telegraphic withdrawal of bids must be confirmed over the Bidder's signature by written notice postmarked on or before the date and time set for receipt of bids.
- 5.2 Withdrawn bids may be resubmitted up to the time designated for the receipt of bids.
- 5.3 No bids shall be withdrawn for sixty days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids.

ARTICLE 6 - CONTRACT AWARD

- 6.1 The City of Newton will award the contract to the lowest responsive and responsible Bidder within sixty days, Saturdays, Sundays, and legal holidays excluded after the opening of bids.
- 6.2 The City of Newton reserves the right to waive any informalities in or to reject any or all Bids if it be in the public interest to do so.

- 6.3 As used herein, the term "lowest responsive and responsible Bidder" shall mean the Bidder (1) whose bid is the lowest of those bidders whose bid conforms in all respects to the Invitation for Bids and who has the capability to perform fully the contract requirements, and the integrity and reliability which assures good faith performance; (2) who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (3) who, where the provisions of section eight B of chapter twenty-nine apply, shall have been determined to be qualified thereunder.
- 6.4 It is the purpose of the City not to award this contract to any bidder who does not furnish evidence satisfactory to the Chief Procurement Officer that he has the ability and experience in this class of work and that he has sufficient capital and plant to enable him to prosecute the same successfully and to complete it within the specified time and that he will complete it in accordance with the terms thereof.
- 6.5 Subsequent to the award and within five (5) days, Saturday, Sundays and legal holidays excluded, after the prescribed forms are presented for signature, the successful Bidder shall execute and deliver to the City a Contract in the form included in the Contract Documents in such number of counterparts as the City may require.
- 6.6 In the event that the City receives low bids in identical amount from two or more responsive and responsible Bidders, the City shall select the successful Bidder by a blind selection process such as flipping a coin or drawing names from a hat. The low Bidders who are under consideration will be invited to attend and observe the selection process.

ARTICLE 7 - TAXES

- 7.1 The Bidder shall not include in this bid any tax imposed upon the sale or rental of tangible personal property in this Commonwealth, such as any and all building materials, supplies, services and equipment required to complete the work.
- 7.2 The City is exempt from payment of the Massachusetts Sales Tax, and the Bidder shall not include any sales tax on its bid. The City's exemption Number is E-046-001-404.

END OF SECTION

CITY OF NEWTON
DEPARTMENT OF PURCHASING
BID FORM #10-05

- A. The undersigned proposes to supply and deliver the materials and/or equipment and/or supplies specified below in full accordance with the Contract Documents and Project Manual supplied by the City of Newton entitled:

**SUPPLY & DELIVER PRODUCE
TO THE NEWTON PUBLIC SCHOOLS – LUNCH PROGRAM**

for the contract price(s) specified below, subject to additions and deduction according to the terms of the specifications.

- B. This bid includes addenda number(s) _____, _____, _____, _____,

- C. The total contract price is: *(Totals from the attached Itemized Bid Form must be placed here)*

_____ dollars \$ _____
(Written word) *(Numerical)*

Grand Total (From execution of the contract through February 26, 2010)

Important to all bidders: please respond to the following questions. A negative response to any of the following questions will automatically disqualify the vendor:

	Yes	No
Is vendor able to meet all delivery requirements and times for the district, as stated?		
The vendor is able to provide quality products that meet or exceed the USDA School Lunch Pattern requirements?		
The vendor can supply produce meeting the grade specified, based upon the grading standards of the U.S. Department of Agriculture?		
The vendor has a Hazard Analysis Critical Control Point Program (HAACP) for all areas of service and products; including, purchasing, receiving, holding, storage, transportation and delivery?		

COMPANY: _____

- D. The undersigned has completed and submits herewith the following documents:
- ☐ Bidder's Qualification Form and References (2 pages)
 - ☐ Items Sheets (2 pages)
 - ☐ HACCP Certification;

o Original bid and one COPY

- E. The undersigned agrees that, if selected as contractor, s/he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the City of Newton, execute a contract in accordance with the terms of this bid. The undersigned hereby certifies that s/he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that s/he will comply fully with all laws and regulations applicable to awards made subject to M.G.L. Chapter 30B.

The undersigned further certifies under the penalties of perjury that this bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this section the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from public contracting or subcontracting in the Commonwealth under the provisions of M.G.L. Chapter 29, Section 29F or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Date _____
(Name of Bidder)
BY: _____
(Printed Name and Title of Signatory)
(Business Address)
(City, State Zip)
(Telephone) _____ / _____ (FAX)
(E-mail address)

NOTE: If the bidder is a corporation, indicate state of incorporation under signature, and affix corporate seal; if a partnership, give full names and residential addresses of all partners; if an individual, give residential address if different from business address; and, if operating as a d/b/a give full legal identity. Attach additional pages as necessary.

PLEASE ENSURE THAT THIS BID FORM IS SIGNED AND RETURNED WITH YOUR BID

END OF SECTION

CITY OF NEWTON

BIDDER'S QUALIFICATIONS AND REFERENCES FORM

All questions must be answered, and the data given must be clear and comprehensive. Please type or print legibly. If necessary, add additional sheet for starred items. This information will be utilized by the City of Newton for purposes of determining bidder responsiveness and responsibility with regard to the requirements and specifications of the Contract.

1. FIRM NAME: _____
2. WHEN ORGANIZED: _____
3. INCORPORATED? ☐ YES ☐ NO DATE AND STATE OF INCORPORATION: _____
- * 4. LIST ALL CONTRACTS CURRENTLY ON HAND, SHOWING CONTRACT AMOUNT AND ANTICIPATED DATE OF COMPLETION:

- * 5. HAVE YOU EVER FAILED TO COMPLETE A CONTRACT AWARDED TO YOU? ☐ YES ☐ NO
IF YES, WHERE AND WHY?

- * 6. HAVE YOU EVER DEFAULTED ON A CONTRACT? ☐ YES ☐ NO
IF YES, PROVIDE DETAILS.

- * 7. LIST YOUR VEHICLES/EQUIPMENT AVAILABLE FOR THIS CONTRACT:

- * 8. IN THE SPACES FOLLOWING, PROVIDE INFORMATION REGARDING CONTRACTS COMPLETED BY YOUR FIRM SIMILAR IN NATURE TO THE PROJECT BEING BID. A MINIMUM OF FOUR (4) CONTRACTS SHOULD BE LISTED. PUBLICLY BID CONTRACTS ARE PREFERRED, BUT NOT MANDATORY.

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____

PUBLICALLY BID? ☐ YES ☐ NO

TYPE OF WORK?: _____

CONTACT PERSON: _____ TELEPHONE #: (____) _____

CONTACT PERSON'S RELATION TO PROJECT?: _____

(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____

OWNER: _____

CITY/STATE: _____

DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____

PUBLICALLY BID? ☐ YES ☐ NO

TYPE OF WORK?: _____

CONTACT PERSON: _____ TELEPHONE #: (____) _____

CONTACT PERSON'S RELATION TO PROJECT?: _____

(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____

OWNER: _____

CITY/STATE: _____

DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____

PUBLICALLY BID? ☐ YES ☐ NO

TYPE OF WORK?: _____

CONTACT PERSON: _____ TELEPHONE #: (____) _____

CONTACT PERSON'S RELATION TO PROJECT?: _____

(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____

OWNER: _____

CITY/STATE: _____

DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____

PUBLICALLY BID? ☐ YES ☐ NO

TYPE OF WORK?: _____

CONTACT PERSON: _____ TELEPHONE #: (____) _____

CONTACT PERSON'S RELATION TO PROJECT?: _____

(i.e., contract manager, purchasing agent, etc.)

9. The undersigned certifies that the information contained herein is complete and accurate and hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City of Newton in verification of the recitals comprising this statement of Bidder's qualifications and experience.

DATE: _____ BIDDER: _____

SIGNATURE: _____

PRINTED NAME: _____ TITLE: _____

END OF SECTION

CITY OF NEWTON, MASSACHUSETTS

PURCHASING DEPARTMENT

GENERAL TERMS AND CONDITIONS

1. The right is reserved to reject any and all bids in whole or in part, to waive informalities, and to make award as may be determined to be in the best interest of the City of Newton.
2. Prices quoted must include delivery to the City , as specified on the Work Order.
3. No charges will be allowed for packing, crating, freight, Express or cartage unless specifically stated and included in the bid.
4. The award to the successful bidder may be canceled if successful bidder shall fail to prosecute the work with promptness and diligence.
5. Time in connection with discount offered will be computed from the date of delivery to the City, as specified on purchase order, or from date correct invoice is received by the City, if the latter date is later than the date of delivery.
6. The successful bidder shall replace, repair or make good, without cost to the City, any defects or faults arising within one (1) year after date of acceptance of articles furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by the Seller.
7. The Seller shall indemnify and save harmless the City and all persons acting for on behalf of it from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment or apparatus, or any part thereof, which infringes or is alleged to infringe on any patent rights. In case such material, equipment or apparatus, or any part thereof, in any such suit is held to constitute infringement, the Seller, within a reasonable time, will at it's expense, and as the City may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus, or remove the material, equipment or apparatus, and refund the sums paid therefor.
8. The successful bidder shall comply with all applicable Federal State and Local laws and regulations.
9. Purchases made by the City are exempt from Federal excise taxes and bid prices must exclude any such taxes. Tax exemption certificates will be furnished upon request.
10. If so stated in the Invitation For Bid the successful bidder will be required to furnish a performance and/or a labor and material payment bond, in an amount, in a form and with a surety satisfactory to the City. The bidder shall be responsible for the cost of the bond(s).
11. If the Invitation for Bids requires bid surety, this surety shall be in the form of a cash, bid bond, cashier's check, treasurer's check, or certified check on a responsible bank, payable to the City of Newton, and must be filed with the original bid in the Office of the Purchasing Agent. Failure to do so will lead to rejection of bid. The bid surety will be returned to the successful bidder within seven (7) days execution of awarded, and approval by the City of performance and/or payment bond(s). In case of default, the bid surety shall be forfeited to the City.

12. Verbal orders are not binding on the City and deliveries made or work done without formal Purchase Order or Contract are at the risk of the Seller or Contractor and may result in an unenforceable claim.
13. The Seller shall agree to indemnify, defend and hold the City harmless from any and all claims arising out of the performance of this contract.
14. "Equality - An item equal to that named or described in the specifications of the contract may be furnished by the Vendor and the naming of any commercial name, trademark or other identification shall not be construed to exclude any item or manufacturer not mentioned by name or as limiting competition but shall establish a standard of equality only. An item shall be considered equal to the item so named or described if (1) it is at least equal in quality, durability, appearance, strength and design; (2) it will perform at least equally the function imposed by the general design for the work being contracted for or the material being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the specifications. The name and identification of all materials other than the one specifically named shall be submitted to the City in writing for approval, prior to purchase, use or fabrication of such items. Subject to the provisions of M.G.L., Ch. 30, Sec. 39J, approval shall be at the sole discretion of the City, shall be in writing to be effective, and the decision of the City shall be final. The City may require tests of all materials so submitted to establish quality standards at the Vendor's expense. All directions, specifications and recommendations by manufacturers for installation, handling, storing, adjustment and operation of their equipment shall be complied with; responsibility for proper performance shall continue to rest with the Vendor.

For the use of material other than the one specified, the Vendor shall assume the cost of and responsibility for satisfactorily accomplishing all changes in the work as shown. If no manufacturer is named, the Vendor shall submit the product he intends to use for approval of the City.

Except as otherwise provided for by the provisions of M.G.L., Ch. 30, Sec. 39J, the Vendor shall not have any right of appeal from the decision of the City condemning any materials furnished if the Vendor fails to obtain the approval for substitution under this clause. If any substitution is more costly, the Vendor shall pay for such costs."

15. Notice is hereby given that the City of Newton Minority/Women Business Enterprise Plan dated December 1999 is applicable to all City of Newton contracts for materials supplies. A copy of this plan may be obtain from the Purchasing Department.
16. Notice is hereby given that the City of Newton Minority Business Enterprise Plan and the Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmative Action is appucable to all City of Newton contracts in excess of \$50,000.00. A copy of these plans may be obtained from the Purchasing Department.

17. Right To Know:

Any vendor who receives an order or orders resulting from this invitation agrees to submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance or mixture containing such substance, pursuant to M.G.L., Ch. 111F, SS8, 9 and 10 and the regulations contained in 441 CMR SS 21.06 when deliveries are made. The vendor agrees to deliver all containers properly labeled pursuant to M.G.L. Ch. 111F, SS 7 and the regulations contained in 441 CMR SS 21.05. Failure to submit an MSDS and/or label on each container will place the vendor in noncompliance with the purchase order. Failure to furnish MSDSs and/or labels on each container may result in civil or criminal penalties, including bid debarment and action to prevent the vendor from selling said substances or mixtures containing said substances within the Commonwealth. All vendors furnishing substances or mixtures subject to Chapter 111F of the M.G.L. are cautioned to obtain and read the law and rules and regulations referred to above. Copies can be obtained from the State House Book Store, Secretary of State, State House, Room 116, Boston, MA 02133, (617-727-2834) for \$1.75 plus \$2.00 postage.

18. INSURANCE REQUIREMENTS

The Contractor shall provide insurance coverage as listed below. This insurance shall be provided at the Contractor's expense and shall be in full force and effect during the full term of this Contract.

WORKER'S COMPENSATION

Worker's Compensation: Per M.G.L. c.. 149, s. 34 and c.. 152 as amended.

COMMERCIAL GENERAL LIABILITY

Personal Injury	\$500,000 each occurrence \$1,000,000 aggregate
Property Damage	\$500,000 each occurrence \$1,000,000 aggregate

VEHICLE LIABILITY

Personal Injury	\$500,000 each person \$1,000,000 aggregate
Property Damage	\$300,000

The City shall be named as additional insureds on the Contractor's Liability Policies.

The Contractor shall not commence the work until proof of compliance with this has been furnished to the City by submitting one copy of a properly endorsed insurance certificate issued by a company authorized to write insurance in the Commonwealth. This certificate shall indicate that the contractual liability coverage is in force.

The Contractor shall file the original and one certified copy of all policies with the City within ten (10) days after contract award. If the City is damaged by the Contractor's failure to maintain such insurance and to so notify the City, then the Contractor shall be responsible for all reasonable costs attributable thereto.

Cancellation of any insurance required by this contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and City at least thirty days prior to the effective date thereof, which shall be expressed in said notice.

FAILURE TO COMPLY WITH THESE TERMS AND CONDITIONS COULD RESULT IN THE CANCELLATION OF YOUR CONTRACT.

END OF SECTION

CONTRACT FORMS

The awarded bidder will be required to complete and submit the following documents in order to execute a contract pursuant to this bid.

The forms are provided here for informational purposes only.

None of the following forms are required at the time of bid submittal.

CITY - CONTRACTOR AGREEMENT

CONTRACT NO. _____

THIS AGREEMENT made this _____ day of _____ in the year Two Thousand and Nine by and between the CITY OF NEWTON, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, hereinafter referred to as the CITY, acting through its Chief Procurement Officer, but without personal liability to him, and hereinafter referred to as the CONTRACTOR.

The parties hereto for the considerations hereinafter set forth agree as follows:

- I. SCOPE OF WORK.** The Contractor agrees to furnish and to deliver to the City at such times, at such place or places, in such manner, and in such quantities as the City may direct, and at the unit prices quoted in the Contractor's bid for the following item or items:

SUPPLY AND DELIVER PRODUCE TO THE NEWTON PUBLIC SCHOOL LUNCH PROGRAM

- II. CONTRACT DOCUMENTS.** The Contract Documents consist of the following documents which are either attached to this Agreement or are incorporated herein by reference:
- a. This CITY-CONTRACTOR Agreement;
 - b. The City's Invitation For Bid # 10-05 issued by the Purchasing Department;
 - c. The Project Manual for Supply & Deliver Produce for the Newton Public School Lunch Program including Specifications, and if included or referenced therein, any Standard Terms and Conditions, Special Conditions, Wage Rate Requirements, Wage Rate Schedule(s);
 - d. Addenda Number(s) _____;
 - e. The Bid Response of the CONTRACTOR submitted for this Project and accompanying documents and certifications;
 - f. Certificate(s) of Insurance and surety bond(s), if any, submitted by the CONTRACTOR in connection with this Project;
 - g. Duly authorized and executed Amendments, Change Orders or Work Orders issued by the CITY after execution of this CITY-CONTRACTOR Agreement.

This CITY-CONTRACTOR Agreement, together with the other documents enumerated in this Article, constitute the entire Agreement between the CITY and the CONTRACTOR.

- III. PRIORITY OF DOCUMENTS.** In the event of inconsistency between the terms of this CITY -CONTRACTOR Agreement and the Project Manual, the terms of this Agreement shall prevail.

- IV. **APPLICABLE STATUTES.** All applicable federal, state and local laws and regulations are incorporated herein by reference and the Contractor agrees to comply with same.
- V. **CONTRACT TERM.** The term of the awarded contract shall extend **from the day of execution of this contract through February 26, 2010. Delivery of product will begin on or before November 1, 2009.** Prices submitted in this bid shall remain firm for the duration of the contract period. The City reserves the right to terminate this contract prior to the expiration date in the event total expenditures reach the above stated contract total. If for any part thereof during the term of this Agreement, funds for the discharge of the City's obligations under this Agreement are not appropriated and authorized, or funds so appropriated and authorized are reduced or withdrawn, then this Agreement shall terminate.
- VI. **QUANTITIES.** The quantities specified in the Project Manual are approximate and are based on previous consumption. It is specifically understood the City does not agree to purchase any specific quantity, and purchases will be made to cover actual requirements only. The City may increase or decrease the quantity of any item specified without change in price per unit of quantity as stated in the Contractor's Bid Response.
- VII. **MATERIALS.** The Contractor agrees, unless otherwise specified, that all equipment, materials and supplies furnished under this contract are to be first quality, new and unused.
- VIII. **AUTHORIZATION OF AND PAYMENT FOR WORK PERFORMED.** The execution of this contract does not constitute a notice to proceed or authorization to perform work or make deliveries. No work shall be commenced or deliveries made unless authorized by a written Work Order issued by the City specifying the equipment, materials or supplies to be delivered. The Contractor will be paid following completed delivery and acceptance of the equipment, materials or supplies ordered in accordance with the Contract. The City will use best efforts to pay within thirty (30) days of receipt of an invoice for the delivered equipment, materials or supplies or acceptance of same whichever date is later.
- IX. **CLAIMS FOR MATERIALS OR LABOR.** In the event any claims have been filed with the City for material or labor delivered or performed pursuant to this contract, the City shall be under no obligation to make any payment until such claims are adjusted to the satisfaction of the City. Any and all liens for supplies may be paid off by the City within twenty (20) days after the filing for record as provided by law of a notice of such liens, except where the claim on which the lien is filed is being litigated by the Contractor, and in such case the City may pay the amount of any final judgment or decree on any such claim. All money paid by the City in settlement of liens and claims as aforesaid, with the costs and expenses incurred by the City in connection therewith shall be charged to the Seller, bearing interest at the rate of six percent (6%) per annum, and be deducted from the next payment falling due the Seller under the terms of this contract.
- X. **UNIT PRICES.** It is agreed that the unit prices listed are maximum prices and that the City shall be entitled to take advantage of any decreasing market conditions, decreases to be governed by the manufacturers' price listing as might be generally adopted in the trade, or by the same percentage that the Seller may reduce prices to others who purchase in similar quantities and under similar conditions.
- XI. **RESPONSIBILITY FOR THE WORK/INDEMNIFICATION.** In the performance of any work, including the delivery of equipment, materials or supplies, pursuant to this Contract, the Contractor shall take all responsibility for the work, and shall take all precautions for preventing injuries to persons and property in or about the work and shall defend, indemnify and hold the City harmless from all loss, cost, damage or expense arising from injuries to persons or property in or about the work. The Contractor shall be responsible for any damage which may be caused by the failure or insufficiency of any temporary works. He shall effectively protect his work and shall be liable for all damage and loss by delay or otherwise caused by his neglect or failure so to do.
- XII. **WARRANTY.** Except as may be otherwise provided in the Project Manual, the Contractor shall replace, repair or make good, without cost to the City, any defects or faults arising within one (1) year after date of acceptance of equipment, materials or supplies furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by the Contractor.
- XIII. **PATENT INDEMNIFICATION.** The Contractor agrees to assume the defense of and shall indemnify and save harmless the City and all persons acting for or on behalf of it from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment or apparatus, or any part thereof which infringes or is alleged to infringe on any patent rights. In case such material, equipment or apparatus, or any part thereof, in any such suit is held to constitute infringement, the Contractor, within a reasonable time, shall at its own expense, and as the City

may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus, or remove the material, equipment, or apparatus and refund the sums paid therefor.

- XIV. INSPECTION.** For the purposes of inspection of the equipment, materials and supplies covered by this contract, the Contractor shall give the City free access to his works and furnish every facility for properly inspecting such equipment, materials and supplies, and shall furnish full information, whenever requested, relating thereto. Approval by any inspector of the City shall not relieve the Contractor from his obligation to comply in all respects with the contract.
- XV. ASSIGNMENT/SUB-CONTRACTING.** The Contractor agrees that he will not sell, assign or transfer this Contract or any part thereof or interest therein without the prior written consent of the City.
- XVI. INSTALLATION.** If any of the equipment, materials and supplies covered by this contract is to be installed by either the Contractor or the City, the Contractor shall, upon request of the City, furnish a competent employee to supervise the installation without expense to the City, unless otherwise provided herein. Such supervisor, or other employees furnished by the Contractor, shall be the agents of the Contractor and not of the City, and the Contractor hereby agrees to indemnify the City and hold it harmless from and against any and all loss, costs, damage, and expense sustained as the result of negligence or other conduct on the part of such supervisor or employee.
- XVII. TERMINATION.** The City of Newton may, by written notice of default to the Contractor, terminate the whole or any part of this Contract or any Shipping of Work Order issued pursuant thereto in any one of the following circumstances:
- a. If the Contractor fails to make delivery of the equipment, goods or supplies or to perform the services within the time specified herein or any extension thereof;
 - b. If the Contractor fails to perform any of the other provisions of this contract or, if in the opinion of the City, Contractor so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not correct such failure within thirty (30) days (or such longer period as the City may authorize in writing) after receipt of notice from the City specifying such failure.
- XVIII. GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- XIX. SEVERABILITY.** The provisions of this Contract are severable. If any section, paragraph, clause or provision of this Contract shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Contract shall be unaffected by such adjudication and all of the remaining provisions of this Contract shall remain in full force and effect as though such section, paragraph, clause or provision, or any part thereof so adjudicated to be invalid, had not been included herein, unless such remaining provisions, standing alone, are incomplete and incapable of being executed in accordance with the intent of the parties to this Contract.
- XX. AMENDMENTS TO THIS CONTRACT.** This Contract may not be amended except in writing executed in the same manner as this CITY-CONTRACTOR Agreement.

THIS SPACE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties have caused this instrument to be executed under seal the day and year first above written.

CONTRACTOR

CITY OF NEWTON

By_____

By_____

Chief Procurement Officer

Title_____

Date_____

Date_____

Affix Corporate Seal Here

By_____

School Committee

Date_____

City funds in the amount of _____
are available in account number

11301-5522

Approved as to Legal Form and Character

I further certify that the Mayor
is authorized to execute contracts
and approve change orders

By_____

Associate City Solicitor

By_____

Comptroller of Accounts

Date_____

Date_____

CONTRACT AND BONDS APPROVED

By_____

David B. Cohen, Mayor

Date_____

CERTIFICATE OF AUTHORITY - CORPORATE

1. I hereby certify that I am the Clerk/Secretary of _____
(insert full name of Corporation)
2. corporation, and that _____
(insert the name of officer who signed the **contract and bonds.**)
3. is the duly elected _____
(insert the title of the officer in line 2)
4. of said corporation, and that on _____
(insert a date that is ***ON OR BEFORE*** the date the officer signed the **contract and bonds.**)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. _____ the _____
(insert **name** from line 2) (insert **title** from line 3)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: _____ *AFFIX CORPORATE*
(Signature of **Clerk or Secretary**)* *SEAL HERE*
7. Name: _____
(Please print or type name in line 6)*
8. Date: _____
(insert a date that is ***ON OR AFTER*** the date the officer signed the **contract and bonds.**)

* The name and signature inserted in lines 6 & 7 **must** be that of the **Clerk or Secretary** of the corporation.

ATTESTATION

Pursuant to MG c. 62C, § 49A, the undersigned acting on behalf of the Contractor, certifies under the penalties of perjury that, to the best of the undersign's knowledge and belief, the Contractor is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.*

**Signature of Individual
or Corporate Contractor (Mandatory)

*** Contractor's Social Security Number
(Voluntary) or Federal Identification Number

By: _____
Corporate Officer
(Mandatory, if applicable)

Date: _____

* The provision in the Attestation relating to child support applies only when the Contractor is an individual.

** Approval of a contract or other agreement will not be granted unless the applicant signs this certification clause.

*** Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of GL c. 62C, § 49A.

NEWTON PUBLIC SCHOOLS SUPPLY AND DELIVER PRODUCE PRODUCTS

1.0 Scope of Service

The City of Newton, on behalf of Newton Public Schools, intends to enter into a contract for the supply and delivery of produce, beginning with **the day of execution of this contract through February 28, 2010**. This contract shall be subject to appropriation and /or continuation of funding.

This contract will be awarded to the Bidder with the lowest annual Grand Total (**for all items**) that has been deemed responsible and responsive. All prices are FOB Inside Delivery. Any bidder not providing prices for all line items may be deemed unresponsive and therefore rejected. **Inside deliveries to six schools is required to start on or before November 1, 2009.**

2.0 Quality and Packaging

All produce must meet or exceed the minimum requirements in regard to standards as established by the USDA and/or the Massachusetts State Department of Public Health, in conjunction with the regulations of the National Child Nutrition School Lunch Program.

The Contractor shall obtain and maintain all licenses, permits and health certifications required by law. The City of Newton reserves the right to request copies of such documents.

The vendor must have a Hazard Analysis Critical Control Point Program (HACCP) for all areas of service and products including but not limited to; purchasing, receiving, holding, storage, transportation and delivery. All Bidders must provide copies of their HACCP certification records at the time of the bid submission.

The Contractor's requirements shall include the following:

- All produce products (except bananas) requiring refrigeration must be transported in refrigerated units and delivered to the school refrigerators at a temperature ranging between 33 and 40 degrees.
- The City reserves the right to call for samples of the produce products proposed.
- The product quality and size offered and accepted shall be supplied during the entire contract period, and no substitution shall be made except upon written approval of the Food Service Department located at 100 Walnut Street, Newtonville, MA 02460.
- The contractor(s) agrees to replace or give credit to the appropriate school for any products, which when tested, do not meet the requirements of the foregoing specifications, if requested by the school to do so.
- Contractor must provide the Food Service Dept. located at 100 Walnut Street, Newtonville, MA 02460 with a list of nutritional information on all produce products within 30 calendar days of the signing of this contract.
- All produce products must be packaged securely with contents, weight and brand name displayed when applicable.
- The Food Services Manager at each school reserves the right to accept or reject produce deliveries on the basis of the accuracy of order, freshness and condition of product and/or packaging.

3.0 Delivery

The Contractor's delivery requirements are as follows:

- Orders will be placed by 2:00 p.m. for the next day delivery via on-line, telephone or email.
- All products shall be delivered in the quantity and on the stated day as ordered.
- The Contractor shall make deliveries up to 3 days per week (as needed) to each of six schools listed below.
- Produce orders will total a minimum of \$100 per location per delivery.
- All deliveries must be brought inside the school kitchen to locations specified by the Food Services Manager.
- All produce products shall be delivered between the hours of 6:30 a.m. to 10:00 a.m.
- No products shall be left outside the building or adjacent to any heating system at any time or in any place other than within the school refrigerators or food storage units.
- Drop shipment or tailgate deliveries will not be accepted or paid for.
- Delivery slips must accompany every delivery. Each delivery slip must be signed by the Food Services Manager or their designee, and a copy shall be left at the individual school.

- Weekly invoices must be sent to the Food Service Dept. located at 100 Walnut Street, Newtonville, MA 02460 for payment processing.
- Produce products will not be delivered or received if school is called off due to a public emergency, inclement weather and/or during school holidays or vacations. It is the Contractor's responsibility to know when those days are.

Quantities shown on the bid form are estimates only of the City's requirements during the contract term. The City may purchase any, all, or none of the quantity specified or may increase the quantity specified in accordance with its actual requirements. The dollar value of the contract may, with bidder's consent, be increased, through a Change Order, by an amount not to exceed twenty five percent (25%) of the contract total. Prices bid shall include inside delivery as indicated by the Food Service Manager or their designee to the school locations as follows:

Newton Public Schools Grocery Products Delivery Schedule:

Bigelow Middle School	Brown Middle School	Day Middle School	Oak Hill Middle School
Alicia Dillion 42 Vernon St Newton Corner, MA 02458 617-552-6834 617-552-7752 fax	Diane Gill 125 Meadowbrook Rd Newton Center, MA 02459 617-559-6932 617-552-7729 fax	Roberta Farina 21 Minot Place Newtonville, MA 02460 617-559-9138 617-552-7057 fax	Kathleen Hyghlander 130 Wheeler Rd Newton Center, MA 02459 617-559-9225 617-552-5547 fax
Newton South High	Newton North High *	Newton North Elementary *	
Linda Cloonon 140 Brandeis Rd Newton Center, MA 02459 617-559-6518 617-552-5553 fax	Maria Mastroianni 360 Lowell Ave Newtonville, MA 02460 617-559-6327 617-559-6204 fax	Colleen Reddy 360 Lowell Ave Newtonville, MA 02460 617-559-6319	

* Denotes same address

The equipment used in the transportation and delivery of products for the Newton Public Schools shall be maintained in a sanitary condition at all times. The equipment shall be subject to unannounced inspections by a Newton Public Schools representative at any time. All vehicles must turn off their engines while making deliveries.

4.0 Pricing; Rebates/Incentives

Bid prices shall encompass everything necessary for furnishing the item(s) specified herein including all transportation, delivery, labor, materials, equipment, service, proper packing and related items in accordance with specifications. Prices must be F.O.B. Destination Inside Building Delivery.

It is the Contractor's responsibility to monitor, record and credit to the Food Services Department any and all rebates and financial incentives offered by vendors.

END OF SECTION

FY2010 Produce Bid List and Estimated 4 Months Usage

Please indicate unit size if different from bid list items.

Description	Unit	Unit Cost	Est. Unit Qty.	Total Cost	Brand name, unit size
Apple, Granny Smith Fancy 198 ct* case	198/Case	\$	300	\$	
Apple, Red Delicious Fancy 198 ct* case	198/Case	\$	300	\$	
Apple, MacintoshFancy 198 ct*, case	198/Case	\$	300	\$	
Banana 10 lbs	10 lbs	\$	150	\$	
Basil No Root 2 lbs	2 lbs	\$	30	\$	
Beans, Green, Snipped, Fancy 10 lbs	10 lbs	\$	100	\$	
Blackberries, US No 1, Pint	Pt	\$	150	\$	
Blueberries fresh, US No 1, Pint	Pt	\$	150	\$	
Broccoli florets, Fancy 5 lbs	5 lbs	\$	150	\$	
Cabbage, red shredded 5 lbs	5 lbs	\$	150	\$	
Cantaloupe, US No.1, 3 ct	3 ct	\$	50	\$	
Carrot, US No 1, 25 lbs Max	25 lbs	\$	250	\$	
Carrot, Baby pld 1.6 oz serving pkg	1.6 oz	\$	100,000	\$	
Carrot, Shredded Fresh 5 lbs	5 lbs	\$	300	\$	
Cauliflower florets, US No. 1, 5 lbs	5 lbs	\$	150	\$	
Celery, US No. 1, Split 6 ct	6 ct	\$	150	\$	
Coleslaw Dry Fine Cut 5 lbs	5 lbs	\$	500	\$	
Cucumber, Fancy, 80 ct case	80/Case	\$	150	\$	
Cucumber, Fancy 6 ct	6 ct	\$	250	\$	
Eggplant, Fancy, 3 ct	3 ct	\$	30	\$	
Garlic Peeled Fresh 5 lbs	5 lbs	\$	15	\$	
Ginger root lb	lb	\$	15	\$	
Grape Red Sdls, Fancy 18 lbs	18 lbs	\$	150	\$	
Grape Grn Sdls, Fancy 18 lbs	18 lbs	\$	150	\$	
Honeydew, US No. 1, 3 ct	3 ct	\$	30	\$	
Lettuce, Iceberg, Fancy 6 ct	6 ct	\$	150	\$	
Lettuce Iceberg Liner, Fancy, 24 ct	24/Case	\$	50	\$	
Lettuce, Mesculin, Fancy lb	Lb	\$	150	\$	
Lettuce,romaine/Liner,Fancy 24 ct	24/Case	\$	150	\$	
Lettuce, Romaine, Fancy 3 ct	3 ct	\$	100	\$	
Lettuce, cut Iceberg/Romain mix, Fancy, 5 lbs	5 lbs	\$	500	\$	
Lettuce, Romaine, Fancy, Chpd 2.5 lbs	2.5 lbs	\$	300	\$	
Lemon, US No 1, 6 ct	6 ct	\$	30	\$	
Mushroom LG, US No1, Basket 3 lbs	3 lbs	\$	100	\$	
Onion, Spanish Jumbo, US No 1, 10 lbs	10 lbs	\$	150	\$	
Orange, US No 1, 138 ct case	138/case	\$	150	\$	
Peach, US No 1, 25 lbs	25 lbs	\$	75	\$	
Peppers Grn Medium, US Fancy, 22 lbs	22 lbs	\$	50	\$	
Peppers, Green Medium, US Fancy 5 lbs	5 lbs	\$	130	\$	
Pineapple, Gldn Ripe, US Fancy 6 ct	6 ct	\$	75	\$	
Plum, US No 1, 28 lbs	28 lbs	\$	50	\$	

Potato Chef, US No 1, 50 lbs	50 lbs	\$	300	\$	
Pumpkin, US No 1, Peeled 10 lbs	10 lbs	\$	10	\$	
Potato Red Bliss, US No 1, 50 lbs	50 lbs	\$	300	\$	
Squash,Butternut,US No 1, Peeled, 10 lbs	10 lbs	\$	40	\$	
Squash Yellow Med. US No 1, 5 lbs	5 lbs	\$	50	\$	
Squash Zucchini Med. US No1, 5 lbs	5 lbs	\$	50	\$	
Strawberries, US No 1, Pints	Pint	\$	100	\$	
Tangerines, US No 1, 150 ct	150/Case	\$	10	\$	
Tofu, Extra Firm 1 lb	Lb	\$	75	\$	
Tomato Grape, US No 1, pint	Pint	\$	300	\$	
Tomato 6 x 6, US No 1, 25 lbs	25 lbs	\$	300	\$	
Tomato, Cherry, US No 1, pint	Pint	\$	150	\$	
Watermelon, Large sds, US Fancy	Each	\$	50	\$	

**The required size 198 count apples is a smaller size that is currently available on the produce market as the perfect snack for our elementary students.*

Please indicate unit size if different from bid list items.

Grand Total here must be placed in Paragraph "C" of the Bid Form. GRAND TOTAL \$ _____

The successful Contractor must provide specifics regarding product description, brand name, product size, etc. Samples may be requested before a final decision is made. The School Department has the right to make the final determination as to whether a brand meets the needs of our schools. **IMPORTANT: Bids must be provided on every line item.**

Signature: _____ **Date:** _____

Name: _____ **Title:** _____

Company: _____ **Telephone:** _____

E-mail _____ **Fax:** _____

Address: _____ **City:** _____ **State:** _____ **Zip:** _____

END OF SECTION